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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,616	07/14/2000	Earl T. Crouch	3000-045	7150

7590 12/26/2002

Rhodes & Mason PLLC
P.O. BOX 2974
Greensboro, NC 27402

EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	**PAPER NUMBER**
1771	8

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-8

Office Action Summary	Application No.	Applicant(s)	
	09/616,616	CROUCH ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 October 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 10-47* is/are pending in the application.

4a) Of the above claim(s) *1,10-23 and 45-47* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. Amendment A, submitted as Paper No. 8 on October 15, 2002, has been entered. Claims 2 – 9 have been cancelled. Claims 24 and 44 have been amended. Therefore, the pending claims are 1 and 10 – 47. Claims 1, 10 – 23 and 45 – 47 are withdrawn from consideration as being drawn to nonelected inventions.

2. The rejections of claims 2 – 9 set forth in the previous Office Action are rendered moot by the cancellation of those claims.

3. Amendment A is sufficient to overcome the objection to claim 44, set forth in section 8 of the previous Office Action.

Election/Restrictions

4. Applicant's election of Group II, drawn to a coated weft inserted, warp knit fabric, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 24, 25, 27, 28, 31, 37, 38, and 42 – 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter (5,399,419) for the reasons of record.

7. Claims 24, 37, 38, and 42 – 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner, Jr. et al. (5,950,457) for the reasons of record.

Claim Rejections - 35 USC § 102/103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 32 – 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Porter et al. or Wagner, Jr. et al. for the reasons of record.

Claim Rejections - 35 USC § 103

10. Claims 24, 25, 27, 28 31 – 38 and 42 – 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouch (5,895,705) in view of Porter et al. for the reasons of record.

11. Claims 39 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner, Jr. et al. for the reasons of record.

Claims 39 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouch et al. in view of Porter et al. for the reasons of record.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner et al. in view of Chapman et al. (4,946,739) for the reasons of record.

13. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner, Jr. et al. in view of Oakland et al. (6,287,743) for the reasons of record.

Response to Arguments

Applicant's arguments filed October 15, 2002 have been fully considered but they are not persuasive. The Applicant has amended the claims to include the method limitation that the coating is added in a single operation, which the Applicant argues makes the claims allowable (Amendment B, page 3). First, the process limitation, i.e., adding the coating in a single

operation, does not distinguish over the prior art, since the prior art adds the coating in a single operation as well. For Example Porter et al. adds the coating and then immediately calendars the coated fabric under pressure to form the final product. While there are multiple steps this is still a single operation.

Further, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). Therefore, as long as the prior art produces the same final product, as that claimed, a coated weft inserted, warp knitted fabric, then the rejection is proper. In this case, the Applicant has not provided sufficient evidence to demonstrate that the process limitation produces a structurally different product: Further, the Applicant has not claimed any properties or structural limitations in the independent claims which would be produced by adding the coating in a single operation. Therefore, the rejections are maintained.

Finally, it is suggested to the Applicant, that if the process produces a unique structure than the Applicant more clearly amend the claims to include detailed process limitations as well as structural properties produced by said process in the independent claims. The Applicant would then need to provide clear evidence that the specific process limitations produce the claimed product structure which would not be produced by the processes taught in the prior art.

In other words, the Applicant would have to show evidence which compares the properties of the prior art material, made by the processes taught in the prior art, to the Applicant's invention made by the claimed process. While the Applicant does have some examples in the specification which compare the distortion of the fabric made by the Applicant's process as compared to the products made on tenter frames, these examples would not be persuasive since the Applicant does not provide clear details on the process steps and parameters used to make the products on tenter frames. What speeds, tensions, materials and temperatures are being used in the tenter frames as compared to the Applicant's process? As well as detailed measurements clearly showing how the distortion is calculated. Further, the Applicant implies that the distortion, or lack there of, might be due to speed and handling and not just producing the material in a continuous format. What specific method steps contribute to the unique product over the prior art? Also, it is noted in the future, as required by 37 CFR 1.111 (b), the Applicant's response should distinctly and specifically point out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
December 19, 2002

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700